

### REMARKS

Claims 1-21 are currently pending in the present application. The allowance of claims 1-10 and 16-21 is gratefully acknowledged. Reconsideration of claims 11-15 is respectfully requested.

#### REJECTIONS UNDER 35 U.S.C. §103:

Claims 11-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tornero, U.S. Patent No. 4,720,068 in view of Huh et al., U.S. Patent Application Publication No. 2004/0124570. Claim 11 defines a pedestal assembly for supporting a boat seat that comprises a tubular-shaped first pedestal member, a tubular-shaped second pedestal member telescopingly received within the first pedestal member, and a pneumatic cylinder operably coupled to the first pedestal member and the second pedestal member for telescopingly actuating the first pedestal member and the second pedestal member relative to one another. Claim 11 further defines the cylinder as including a cylinder switch that actuates the cylinder by moving the actuator switch in a relatively transverse direction with respect to a longitudinal axis of the cylinder.

It is well established law that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under §103, teachings of references can be combined only if there is some suggestion or incentive to do so. *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). The mere fact that prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992) (citing *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984)). Moreover, the respondent cannot pick and choose among the individual elements of assorted prior art references to recreate the claimed invention as virtually all inventions are necessarily a combination of old elements. *Smith Kline Diagnostics v. Helena Lab. Corp.*, 859 F.2d 878, 887, 8 U.S.P.Q.2d 1468, 1475 (Fed. Cir. 1988). The notion, therefore, that combination claims can be declared invalid merely upon finding

similar elements and similar prior patents would necessarily describe virtually all patents and cannot be the law under the statute, §103. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1575, 1 U.S.P.Q. 2d 1593, 1603 (Fed. Cir. 1987).

Tornero '068 specifically discloses a seat support column adapted to overcome side loading problems. In order to address this problem, an upper end of the tubular casing which depends from a seat platform rests upon an upper end of the gas spring cartridge in such a manner as to be radially movable or tiltable with respect thereto. More specifically, a mounting support structure includes a tubular support cylinder, generally open at an upper end thereof, which is provided with an elongated annular bushing for guiding axial reciprocation and swiveling motion of the casing therein. The bushing is relatively stiff to provide guidance with casing, however, side loads created by sitting on an associated seat edge are great enough such that the bushing will give slightly to permit a force of tilt or lateral shift, as best illustrated in Figs. 1 and 2. Tornero '068 further discloses a cartridge pin for activating the associated pneumatic cylinder, and an activating pin extension aligned therewith. As is obvious from Figs. 1 and 2 of the Tornero '068 reference, the pneumatic cylinder as disclosed therein is actuated by a linearly-actuated actuator switch. Huh et al. discloses a gas cylinder of a particular arrangement, however, neither Tornero nor Huh et al. teach, motivate, or suggest combining that which is taught therein. Moreover, placing the gas cylinder as disclosed by Huh et al. into the seat support column as disclosed by Tornero would require a picking and choosing of particular components from each, as the arrangement as disclosed by Tornero et al. allows the tilting of the associated pneumatic cylinder within the disclosed housing, as discussed above, and therefore would not operate correctly. Specifically, if tipping of the Huh et al. gas cylinder within the Tornero '068 seat support assembly was permitted, the cylinder would be actuated when the cylinder tipped in one direction and may fail to actuate because of slack created when tipped in the other direction. Therefore, neither Tornero nor Huh et al., nor the combination thereof disclose that which is defined in independent claim 11.

Applicant : Steve Hogle et al.  
Appln. No. : 10/689,212  
Page -4-

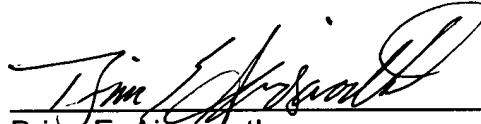
Accordingly, claim 11 is in condition for allowance. Claims 12-15 depend from claim 11 which is in condition for allowance, as noted above, and are therefore also in condition for allowance.

Accordingly, claims 1-21 are in condition for allowance and a Notice of Allowability is earnestly solicited.

Respectfully submitted,

By: Price, Heneveld, Cooper,  
DeWitt & Litton, LLP

Dated: September 21, 2005



Brian E. Ainsworth  
Registration No. 45 808  
695 Kenmoor, S.E.  
Post Office Box 2567  
Grand Rapids, Michigan 49501  
(616) 949-9610

BEA:kjc